IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 595 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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RAVAL MANGABHAI MAFABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AV NAIR LD.ADVOCATE WITH MR. HARIN P RAVAL for Appellant(s) : 1,
MS DS PANDIT, LD.APP for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 11/09/2007

ORAL JUDGMENT

1. Heard Shri A.V. Nair, learned counsel appearing on behalf of Shri Harin P. Raval for the appellant and Ms.D.S. Pandit, learned Additional Public Prosecutor, appearing on behalf of the respondent-State. Today both, the appellant and the orig. complainant-

victim, are present in the Court.

2. It is submitted by Shri A.V. Nair, learned counsel appearing for the appellant, that the present appeal is arising out of the judgment and order of conviction and sentence dated 29th April 1993 passed by the learned Special Judge, Mehsana in Special Atrocity Case No.10 of 1993, whereby the learned trial Judge held the appellant guilty for the charge of offence punishable under Section 325 of the Indian Penal Code as well as Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989 (hereinafter referred to as 'the Act'). The learned trial Judge has sentenced the appellant to undergo rigorous imprisonment for three years and to pay a fine of Rs.200/-, in default to undergo simple imprisonment for one month for the offence punishable under Section 325 of the Indian Penal Code; and so far as the offence punishable under Section 3(1)(10) of the Act is concerned, the learned trial Judge has sentenced the appellant to undergo

rigorous imprisonment for six months and to pay a fine of Rs.100/-, in default to undergo simple imprisonment for 15 days. No separate sentence has been awarded for the offence punishable under Section 506(2) of the Indian Penal Code. The learned trial Judge has ordered both the sentences to run concurrently. According to Shri A.V. Nair, his submissions run into two folds. The first fold of his submissions is that the parties have compounded the offence so far as the offence punishable under Section 325 of the Indian Penal Code is concerned, and they have jointly prayed that they may be permitted to compound the offence by tendering a compromise pursis signed by both the parties; and both the parties have been identified by two different lawyers. The orig.gcomplainant-victim has prayed that he may be permitted to compound the offence with the appellant herein and the appellant may be acquitted from the charge of offence punishable under Section 325 of the Indian Penal Code.

3. The second fold of argument of Shri A.V. Nair is that the alleged quarrel between the appellant and the orig.complainant was the result of an individual dispute regarding payment of an amount. It is clear from the evidence that perhaps there was some hot exchange of words and the complainant-victim was given a blow. It is settled legal position that the prosecution is supposed to establish one clear fact to bring home the charge of offence punishable under the provisions of the Act that the offence was committed only because the complainant-victim is a member of either Scheduled Caste or Scheduled Tribe. There should not be any victimisation of a member of either Scheduled Caste or Scheduled Tribe, is the intention of the legislature. Each individual offence committed qua the Scheduled Caste or Scheduled Tribe member would not fall in the category of offence punishable under Section 3(1)(10) of the Act or any other atrocious act described and enumerated in Section 3 of the Act. It is not

even the say of the complainant that the offence was committed qua him because he was a member of the Scheduled Caste, if the evidence of the complainant is read as a whole.

4. The learned trial Judge has not imposed any separate punishment to the appellant for the offence punishable under Section 506(2) of the Indian Penal Code, but according to Shri A.V. Nair, learned counsel appearing for the appellant, the finding of guilt of the appellant for the offence punishable under Section 506(2) of the Indian Penal Code is also erroneous, especially when the very learned trial Judge has acquitted the appellant from the charge of offence punishable under Section 504 of the Indian Penal Code. If the substratum of the story of the prosecution is considered, it was not possible for the learned trial Judge to acquit the appellant from the charge of offence punishable under Section 504 of the Indian Penal Code simultaneously holding the

appellant guilty for the charge of offence punishable under Section 506(2) of the Indian Penal Code. There is a clear error of logic and according to Shri A.V. Nair, the law has been wrongly applied in the present case.

5. The application to seek permission to compound the offence preferred under Section 320 of the Code of Criminal Procedure, 1973, attaching therewith the compromise pursis, tendered today by Shri A.V. Nair, is taken on record, and the complainant-victim, who is present in the Court today, is permitted to compound the offence as prayed for in light of the consent terms attached with the application. The said application is signed by the complainant-victim himself and he has been identified by Shri A.V. Nair. The consent pursis is signed by both, complainant and appellant herein and so both these documents now shall form a part of the record of the present appeal.

6. Having considered the oral as well as

documentary evidence led by the prosecution and the fact that the appellant has been permitted to compound the offence with the permission of this Court, it would not be either judicious or proper to uphold the judgment and order of conviction for the offence punishable under Section 506(2) of the Indian Penal Code.

7. Ms.D.S. Pandit, learned Additional Public Prosecutor, has fairly submitted that the parties have compounded the offence punishable under Section 325 of the Indian Penal Code and from the evidence it emerges that the quarrel was the result of a personal dispute on account of either non-payment or inadequate payment of labour work and hence, the provisions of the Act would not be attracted.

8. So in view of aforesaid observations and discussion, the present appeal is hereby allowed. The appellant is hereby ordered to be acquitted from the charge of offence punishable under Section 325 of the Indian

Penal Code on account of compromise arrived at between the parties and the permission granted by the Court to compound the said offence. The judgment and order of conviction and sentence dated 29th April 1993 passed by the learned Special Judge, Mehsana, in Special Atrocity Case No.10 of 1993, so far as the offences punishable under Section 506(2) of the Indian Penal Code and also under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989, is hereby quashed and set aside. The appellant is ordered to be acquitted from all the charges levelled against him in respect of the offence in question. The amount of fine, if any paid by the appellant, be refunded to the appellant on his proper identification. The bail bond executed by the appellant shall stand discharged.

9. Before parting with the order, it is pertinent to note that the orig.complainant-victim is present in the Court today and he has accepted that he has signed the application preferred under Section 320 of the Code of Criminal

Procedure, 1973 tendered today in the Court and so also the compromise pursis. He has also confirmed that the amount of compensation to the tune of Rs.5000/- (Rupees Five Thousand only) as mentioned in the compromise pursis has been received by him.

(C.K. Buch, J)

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